

SECOND REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 779

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR BARTLE.

Read 1st time January 14, 2010, and ordered printed.

Read 2nd time January 19, 2010, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 11, 2010, with recommendation that the bill do pass.

Taken up for Perfection February 22, 2010. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3561S.02P

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## AN ACT

To repeal sections 488.5050, 556.036, and 650.055, RSMo, and to enact in lieu thereof three new sections relating to DNA profiling, with penalty provisions and an emergency clause for a certain section.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 488.5050, 556.036, and 650.055, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 488.5050,  
3 556.036, and 650.055, to read as follows:

488.5050. 1. In addition to any other surcharges authorized by statute,  
2 the clerk of each court of this state shall collect the surcharges provided for in  
3 subsection 2 of this section.

4 2. A surcharge of thirty dollars shall be assessed as costs in each circuit  
5 court proceeding filed within this state in all criminal cases in which the  
6 defendant pleads guilty **to** or [nolo contendere to] **is found guilty** or [is]  
7 convicted of a felony, except when the defendant pleads guilty or is found guilty  
8 of a class B felony, class A felony, or an unclassified felony, under chapter 195,  
9 RSMo, in which case, the surcharge shall be sixty dollars. A surcharge of fifteen  
10 dollars shall be assessed as costs in each court proceeding filed within this state  
11 in all **other** criminal cases, except for traffic violations cases in which the  
12 defendant pleads guilty **to** or [nolo contendere to] **is found guilty** or [is]  
13 convicted of a misdemeanor.

14 3. Notwithstanding any other provisions of law, the moneys collected by

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 clerks of the courts pursuant to the provisions of subsection 1 of this section shall  
16 be collected and disbursed in accordance with sections 488.010 to 488.020, and  
17 shall be payable to the state treasurer.

18 4. [If in the immediate previous fiscal year, the state's general revenue  
19 did not increase by two percent or more, the state treasurer shall deposit such  
20 moneys or other gifts, grants, or moneys received on a monthly basis into the  
21 state general revenue fund. Otherwise the state treasurer shall deposit such  
22 moneys in accordance with the provisions of subsection 5 of this section.

23 5.] The state treasurer shall deposit such moneys or other gifts, grants,  
24 or moneys received on a monthly basis into the "DNA Profiling Analysis Fund",  
25 which is hereby created in the state treasury. The fund shall be administered by  
26 the department of public safety. The moneys deposited into the DNA profiling  
27 analysis fund shall be used only [for DNA profiling analysis of convicted offender  
28 samples performed] **by the highway patrol crime laboratory** to fulfill the  
29 purposes of the DNA profiling system pursuant to section 650.052,  
30 RSMo. Notwithstanding the provisions of section 33.080, RSMo, to the contrary,  
31 any moneys remaining in the fund at the end of the biennium shall not revert to  
32 the credit of the general revenue fund.

33 [6.] 5. The provisions of subsections 1 and 2 of this section shall expire  
34 on August 28, 2013.

556.036. 1. A prosecution for murder, forcible rape, attempted forcible  
2 rape, forcible sodomy, attempted forcible sodomy, or any class A felony may be  
3 commenced at any time.

4 2. Except as otherwise provided in this section, prosecutions for other  
5 offenses must be commenced within the following periods of limitation:

6 (1) For any felony, three years, except as provided in subdivision (4) of  
7 this subsection;

8 (2) For any misdemeanor, one year;

9 (3) For any infraction, six months;

10 (4) For any violation of section 569.040, RSMo, when classified as a class  
11 B felony, or any violation of section 569.050 or 569.055, RSMo, five years.

12 3. If the period prescribed in subsection 2 of this section has expired, a  
13 prosecution may nevertheless be commenced for:

14 (1) Any offense a material element of which is either fraud or a breach of  
15 fiduciary obligation within one year after discovery of the offense by an aggrieved  
16 party or by a person who has a legal duty to represent an aggrieved party and

17 who is himself or herself not a party to the offense, but in no case shall this  
18 provision extend the period of limitation by more than three years. As used in  
19 this subdivision, the term "person who has a legal duty to represent an aggrieved  
20 party" shall mean the attorney general or the prosecuting or circuit attorney  
21 having jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses  
22 committed pursuant to sections 407.511 to 407.556, RSMo; and

23 (2) Any offense based upon misconduct in office by a public officer or  
24 employee at any time when the defendant is in public office or employment or  
25 within two years thereafter, but in no case shall this provision extend the period  
26 of limitation by more than three years; and

27 (3) Any offense based upon an intentional and willful fraudulent claim of  
28 child support arrearage to a public servant in the performance of his or her duties  
29 within one year after discovery of the offense, but in no case shall this provision  
30 extend the period of limitation by more than three years.

31 4. An offense is committed either when every element occurs, or, if a  
32 legislative purpose to prohibit a continuing course of conduct plainly appears, at  
33 the time when the course of conduct or the defendant's complicity therein is  
34 terminated. Time starts to run on the day after the offense is committed.

35 5. A prosecution is commenced for a misdemeanor or infraction when the  
36 information is filed and for a felony when the complaint or indictment is filed.

37 6. The period of limitation does not run:

38 (1) During any time when the accused is absent from the state, but in no  
39 case shall this provision extend the period of limitation otherwise applicable by  
40 more than three years; or

41 (2) During any time when the accused is concealing himself from justice  
42 either within or without this state; or

43 (3) During any time when a prosecution against the accused for the  
44 offense is pending in this state; or

45 (4) During any time when the accused is found to lack mental fitness to  
46 proceed pursuant to section 552.020, RSMo;

47 **(5) During any period of time after a DNA profile is developed**  
48 **and reported from evidence collected in relation to the commission of**  
49 **an offense until the time when the accused is identified by name based**  
50 **upon a match between that DNA evidence profile and the known DNA**  
51 **profile of the accused. For purposes of this section, the term "DNA**  
52 **profile" means the collective results of the DNA analysis of a sample.**

650.055. 1. Every individual, in a Missouri circuit court, who:

2 (1) Pleads guilty to or is found guilty of a felony or any offense under  
3 chapter 566[, RSMo, or who]; or

4 (2) Is seventeen years of age or older and [who is] arrested for **robbery**  
5 **in the first degree under section 569.020, robbery in the second degree**  
6 **under section 569.030**, burglary in the first degree under section 569.160,  
7 RSMo, or burglary in the second degree under section 569.170, RSMo, or a felony  
8 offense under chapters 565, [566,] 567, 568, or 573, RSMo, **or any offense**  
9 **under chapter 566; or**

10 (3) Has been determined to be a sexually violent predator pursuant to  
11 sections 632.480 to 632.513, RSMo[.]; or

12 (4) Is an individual required to register as a sexual offender under  
13 sections 589.400 to 589.425, RSMo[.];

14 shall have a fingerprint and blood or scientifically accepted biological sample  
15 collected for purposes of DNA profiling analysis.

16 **2. Any individual subject to DNA collection and profiling analysis**  
17 **under this section shall provide a DNA sample:**

18 (1) Upon booking at a county jail or detention facility; or

19 (2) Upon entering or before release from the department of corrections  
20 reception and diagnostic centers; or

21 (3) Upon entering or before release from a county jail or detention facility,  
22 state correctional facility, or any other detention facility or institution, whether  
23 operated by private, local, or state agency, or any mental health facility if  
24 committed as a sexually violent predator pursuant to sections 632.480 to 632.513,  
25 RSMo; or

26 (4) When the state accepts a person from another state under any  
27 interstate compact, or under any other reciprocal agreement with any county,  
28 state, or federal agency, or any other provision of law, whether or not the person  
29 is confined or released, the acceptance is conditional on the person providing a  
30 DNA sample if the person was convicted of, **found guilty of, or** pleaded guilty  
31 to[, or pleaded nolo contendere to an] **a felony** offense [in any other jurisdiction  
32 which would be considered a qualifying offense as defined in this section if  
33 committed in this state, or if the person was convicted of, pleaded guilty to, or  
34 pleaded nolo contendere to any equivalent offense] in any other jurisdiction; or

35 (5) If such individual is under the jurisdiction of the department of  
36 corrections. Such jurisdiction includes persons currently incarcerated, persons

37 on probation, as defined in section 217.650, RSMo, and on parole, as also defined  
38 in section 217.650, RSMo; or

39 **(6) At the time of registering as a sexual offender pursuant to**  
40 **sections 589.400 to 589.425.**

41 [2.] **3.** The Missouri state highway patrol and department of corrections  
42 shall be responsible for ensuring adherence to the law. Any person required to  
43 provide a DNA sample pursuant to this section shall be required to provide such  
44 sample, without the right of refusal, at a collection site designated by the  
45 Missouri state highway patrol and the department of corrections. Authorized  
46 personnel collecting or assisting in the collection of samples shall not be liable in  
47 any civil or criminal action when the act is performed in a reasonable  
48 manner. Such force may be used as necessary to the effectual carrying out and  
49 application of such processes and operations. The enforcement of these provisions  
50 by the authorities in charge of state correctional institutions and others having  
51 custody or jurisdiction over [those who have been arrested for, convicted of,  
52 pleaded guilty to, or pleaded nolo contendere to felony offenses] **individuals**  
53 **included in subsection 1 of this section**, which shall not be set aside or  
54 reversed, is hereby made mandatory. The board of probation or parole shall  
55 recommend that an individual **on probation or parole** who refuses to provide  
56 a DNA sample have his or her probation or parole revoked. In the event that a  
57 person's DNA sample is not adequate for any reason, the person shall provide  
58 another sample for analysis.

59 [3.] **4.** The procedure and rules for the collection, analysis, storage,  
60 expungement, use of DNA database records and privacy concerns shall not  
61 conflict with procedures and rules applicable to the Missouri DNA profiling  
62 system and the Federal Bureau of Investigation's DNA databank system.

63 [4.] **5.** Unauthorized [uses] **use** or dissemination of individually  
64 identifiable DNA information in a database for purposes other than criminal  
65 justice or law enforcement is a class A misdemeanor.

66 [5.] **6.** Implementation of sections 650.050 to 650.100 shall be subject to  
67 future appropriations to keep Missouri's DNA system compatible with the Federal  
68 Bureau of Investigation's DNA databank system.

69 [6.] **7.** All DNA records and biological materials retained in the DNA  
70 profiling system are considered closed records pursuant to chapter 610, RSMo. All  
71 records containing any information held or maintained by any person or by any  
72 agency, department, or political subdivision of the state concerning an

73 individual's DNA profile shall be strictly confidential and shall not be disclosed,  
74 except to:

75 (1) Peace officers, as defined in section 590.010, RSMo, and other  
76 employees of law enforcement agencies who need to obtain such records to  
77 perform their public duties;

78 (2) The attorney general or any assistant attorneys general acting on his  
79 or her behalf, as defined in chapter 27, RSMo;

80 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56,  
81 RSMo, and their employees who need to obtain such records to perform their  
82 public duties;

83 (4) The individual whose DNA sample has been collected, or his or her  
84 attorney; or

85 (5) Associate circuit judges, circuit judges, judges of the courts of appeals,  
86 supreme court judges, and their employees who need to obtain such records to  
87 perform their public duties.

88 [7.] 8. Any person who obtains records pursuant to the provisions of this  
89 section shall use such records only for investigative and prosecutorial purposes,  
90 including but not limited to use at any criminal trial, hearing, or proceeding; or  
91 for law enforcement identification purposes, including identification of human  
92 remains. Such records shall be considered strictly confidential and shall only be  
93 released as authorized by this section.

94 [8. Within ninety days of warrant refusal, the arresting agency shall  
95 notify the Missouri state highway patrol crime laboratory which shall expunge all  
96 DNA records taken at the arrest for which the warrant was refused in the  
97 database pertaining to the person and destroy the DNA sample of the person,  
98 unless the Missouri state highway patrol determines that the person is otherwise  
99 obligated to submit a DNA sample.]

100 9. An individual may request expungement of his or her DNA sample and  
101 DNA profile through the court issuing the reversal or dismissal. A certified copy  
102 of the court order establishing that such conviction has been reversed or guilty  
103 plea [or plea of nolo contendere] has been set aside shall be sent to the Missouri  
104 state highway patrol crime laboratory. Upon receipt of the court order, the  
105 laboratory will determine that the requesting individual has no other qualifying  
106 offense as a result of any separate plea or conviction **and no other qualifying**  
107 **arrest** prior to expungement.

108 (1) A person whose DNA record or DNA profile has been included in the

109 state DNA database in accordance with this section[, section 488.5050, RSMo,]  
110 and sections 650.050, 650.052, and 650.100 may request expungement on the  
111 grounds that the conviction has been reversed, or the guilty plea [or plea of nolo  
112 contendere] on which the authority for including that person's DNA record or  
113 DNA profile was based has been set aside.

114 (2) Upon receipt of a written request for expungement, a certified copy of  
115 the final court order reversing the conviction or setting aside the plea and any  
116 other information necessary to ascertain the validity of the request, the Missouri  
117 state highway patrol crime laboratory shall expunge all DNA records and  
118 identifiable information in the **state DNA** database pertaining to the person and  
119 destroy the DNA sample of the person, unless the Missouri state highway patrol  
120 determines that the person is otherwise obligated to submit a DNA  
121 sample. Within thirty days after the receipt of the court order, the Missouri state  
122 highway patrol shall notify the individual that it has expunged his or her DNA  
123 sample and DNA profile, or the basis for its determination that the person is  
124 otherwise obligated to submit a DNA sample.

125 (3) The Missouri state highway patrol is not required to destroy any item  
126 of physical evidence obtained from a DNA sample if evidence relating to another  
127 person would thereby be destroyed.

128 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match  
129 derived from the database shall not be excluded or suppressed from evidence, nor  
130 shall any conviction be invalidated or reversed or plea set aside due to the failure  
131 to expunge or a delay in expunging DNA records.

132 **10. When a DNA sample is taken of an arrestee for any offense**  
133 **listed under subsection 1 of this section and the warrant is refused,**  
134 **within thirty days of warrant refusal, the arresting agency shall notify**  
135 **the Missouri state highway patrol crime laboratory, which shall**  
136 **expunge all DNA records taken at the arrest for which the warrant was**  
137 **refused in the database pertaining to the person and destroy the DNA**  
138 **sample of the person, unless the Missouri state highway patrol**  
139 **determines that the person is otherwise obligated to submit a DNA**  
140 **sample. Prior to expungement, the state highway patrol crime**  
141 **laboratory shall determine whether the individual has any other**  
142 **qualifying offenses or arrests that would require a DNA sample to be**  
143 **taken and retained prior to expungement under this subsection. The**  
144 **Missouri state highway patrol crime laboratory shall have thirty days**

145 **from the date it receives notice to determine whether the DNA sample**  
146 **shall be expunged.**

147 [9.] 11. When a DNA sample is taken of an arrestee for any offense listed  
148 under subsection 1 of this section and charges are filed:

149 (1) If the charges are later withdrawn, the prosecutor shall notify the  
150 state highway patrol crime laboratory that such charges have been withdrawn;

151 (2) If the case is dismissed, the court shall notify the state highway patrol  
152 crime laboratory of such dismissal;

153 (3) If the court finds at the preliminary hearing that there is no probable  
154 cause that the defendant committed the offense, the court shall notify the state  
155 highway patrol crime laboratory of such finding;

156 (4) If the defendant is found not guilty, the court shall notify the state  
157 highway patrol crime laboratory of such verdict.

158 If the state highway patrol crime laboratory receives a notice **of expungement**  
159 under this subsection [that the charges have been withdrawn, the case has been  
160 dismissed, there is a finding that the necessary probable cause does not exist, or  
161 the defendant is found not guilty] **or subsection 10 of this section**, such crime  
162 laboratory shall expunge the DNA sample and DNA profile of the arrestee within  
163 thirty days. Prior to such expungement, the state highway patrol crime  
164 laboratory shall determine whether the individual has any other qualifying  
165 offenses or arrests that would require a DNA sample to be taken and retained  
166 prior to expungement under this subsection.

Section B. Because this legislation is necessary to ensure the continued  
2 operation of the DNA profiling system which dramatically contributes to the  
3 safety of citizens of this state and others, the repeal and reenactment of section  
4 488.5050 of this act is deemed necessary for the immediate preservation of the  
5 public health, welfare, peace and safety, and is hereby declared to be an  
6 emergency act within the meaning of the constitution, and the repeal and  
7 reenactment of section 488.5050 of this act shall be in full force and effect upon  
8 its passage and approval.

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